

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

ADAM NEIBAUER,

Plaintiff,

v.

Case No. 19-cv-1765-pp

WISCONSIN DEPARTMENT  
OF CORRECTIONS, *et al.*,

Defendants.

---

**ORDER REQUIRING PLAINTIFF TO PAY INITIAL PARTIAL FILING FEE OR  
EXPLAIN WHY HE IS UNABLE TO DO SO**

---

Plaintiff Adam Neibauer is an inmate at the Oshkosh Correctional Institution and is representing himself. When he filed this lawsuit, he asked the court to allow him to proceed without prepaying the filing fee. Dkt. No. 2. On December 6, 2019, the court ordered that by December 30, 2019, the plaintiff had to pay an initial partial filing fee of \$1.06 before the court could rule on his request. Dkt. No. 6. The court advised the plaintiff that after it received this fee, it would determine whether he could proceed with his case without prepaying the full filing fee. Over a month has passed since the deadline of December 30, 2019, and the court has not received the \$1.06 initial partial filing fee.

Before dismissing this case for the plaintiff's failure to pay the initial partial filing fee, the court must determine whether the plaintiff did not pay the fee because he is unable to do so. See Thomas v. Butts, 745 F.3d 309, 312-13 (7th Cir. 2014). A court may not dismiss a prisoner's lawsuit if he lacks funds in his prison trust account to pay the initial partial filing fee. Id. at 312; see

also 28 U.S.C. §1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action . . . for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.”). “But if the court finds that the prisoner is unable to pay the partial filing fee at the time of collection because he intentionally depleted his account to avoid payment, the court in its sound discretion may dismiss the action.” Thomas, 745 F.3d at 312 (citations and internal quotation omitted).

The court will give the plaintiff additional time to pay the initial partial fee, or to explain to the court why he is unable to do so.

The court **ORDERS** that, by the end of the day on **February 28, 2020**, the plaintiff must either pay the \$1.06 initial partial filing fee or provide the court with a written explanation of why he can’t pay it. The plaintiff must send the \$1.06, or the written explanation, in time for the court to *receive* it by the end of the day on February 28, 2020. If the court does not receive either the initial partial filing fee or the written explanation by the end of the day on February 28, 2020, the court will dismiss the case without prejudice. If the plaintiff no longer wants to move forward with this case, he does not have to take any further action. If the court dismisses his case without prejudice, he may refile his complaint later, subject to the relevant statute of limitations.

Dated in Milwaukee, Wisconsin, this 10th day of February, 2020.

**BY THE COURT:**



**HON. PAMELA PEPPER**  
**United States District Court Judge**